IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

WP(C).No. 35669 of 2007(U)

PETITIONER:

M/S.BLUEMOUNT AUTOMOBILES
BANERJI ROAD,ERNAKULAM
COCHIN 682 031,REPRESENTED BY ITS
MANAGING PARTNER-REJI CHACKO.

BY ADV. SRI.PREMJIT NAGENDRAN

RESPONDENTS:

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1. THE ASSISTANT COMMISSIONER (ASSESSMENT)
SPECIAL CIRCLE-1
COMMERCIAL TAXES, ERNAKULAM.

2. THE TAHSILDHAR (R.R.)
KANAYANNUR TALUK, ERNAKULAM.

ADDL.R3. THE DEPUTY COMMISSIONER (APPEALS),
ERNAKULAM (IMPLEADED AS PER ORDER DT.4.12.2007
ON IA 16144/2007).

BY GOVT. PLEADER SRI GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

W.P.(C) 35669 OF 2007

Dated: December 4, 2007

JUDGMENT

Against Exts.P1 and P2 assessment orders, the petitioner has filed Exts.P14 and P15 appeals together with Exts.P17 and P18 petitions seeking stay. Since orders are not passed in the applications for stay, revenue recovery proceedings have been initiated and hence the writ petition.

2. It is contended by the learned counsel for the petitioner that in terms of the judgment in W.P.(C) 27053/2005 and as clarified in R.P.465/2006, on the strength of Exts.P3 to P13 documents, the petitioner will be able to prove that it is entitled to concessional rate of tax. On this basis it is contended that the petitioner is liable to succeed in the appeal that is pending. In the meanwhile since revenue recovery proceedings have been initiated, the petitioner submits that they are willing to furnish bank guarantee to the satisfaction of the 1st respondent and on that condition the appeal may be directed to be disposed of.

3. I have considered the submission. It is true that in the judgment and order referred to above, this court has already directed that if the assessee is able to satisfy that the goods were sold to Canteen Stores Department, they are entitled to concessional rate of tax. However, taking note of the materials made available in this court, I am satisfied that prima facie, the petitioner has made out a case for consideration by the appellate authority. In view of this, it is reasonable that on furnishing bank guarantee for the disputed tax to the

satisfaction of the1st respondent, recovery steps are liable to be deferred.

Accordingly, I dispose of this writ petition directing that the additional 3rd respondent shall consider and pass orders on Exts.P14 and P15 appeals with notice to the petitioner as expeditiously as possible, at any rate, within eight weeks of receipt of a copy of this judgment. In the meanwhile, if the petitioner furnishes bank guarantee for the disputed amount to the satisfaction of the1st respondent within ten days from today, further proceedings will not be continued for recovery of the tax due in terms of Exts.P1 and P2.

ANTONY DOMINIC
JUDGE

mt/-